

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

HEMLOCK SEMICONDUCTOR
CORPORATION,

Plaintiff,

-against-

KYOCERA CORPORATION,

Defendant.

Case No. 15-cv-11236
Hon. Thomas L. Ludington

**STIPULATION AND ORDER
OF CONSOLIDATION AND
DIRECTING FILINGS**

WHEREAS, Plaintiff Hemlock Semiconductor Corporation (“Hemlock”) and Defendant Kyocera Corporation (“Kyocera”) entered into a series of three long-term agreements for the supply of polycrystalline silicon between the years 2005 and 2007 (“Agreements I-III”);

WHEREAS, Hemlock’s affiliate Hemlock Semiconductor, LLC (“Hemlock LLC”) and Kyocera entered into a fourth long-term agreement for the supply of polycrystalline silicon in 2008 (“Agreement IV”);

WHEREAS, on April 1, 2015, Hemlock commenced this action against Kyocera with respect to Agreements I-III (“Action #1”);

WHEREAS, on October 7, 2015, Hemlock LLC commenced an action against Kyocera with respect to Agreement IV in the Saginaw County Circuit Court (“Action #2”);

WHEREAS, on February 3, 2016, Kyocera removed Action #2 to this Court, as a result of which Action #2 now bears the caption Hemlock Semiconductor, LLC v. Kyocera Corporation, No. 16-cv-10376 (E.D. Mich.) (Ludington, J.);

WHEREAS, Kyocera filed an Answer and Counterclaim in Action #2 on February 10, 2016;

WHEREAS, under the Federal Rules of Civil Procedure, Hemlock LLC's deadline to file a responsive pleading to Kyocera's Counterclaim in Action #2 is March 7, 2016;

WHEREAS, each of Hemlock, Hemlock LLC, and Kyocera desires to consolidate this Action #1 with Action #2 for all purposes, including trial;

WHEREAS, Action #1 and Action #2 are factually and legally indistinguishable in many respects, and consolidation would serve judicial efficiency without prejudice to any party;

WHEREAS, if consolidation is granted, Hemlock and Hemlock LLC desire to file a consolidated amended complaint that would supersede their complaints previously filed in Actions #1 and #2, and Kyocera desires to file a consolidated amended responsive pleading that would supersede its responsive pleadings previously filed in Actions #1 and #2;

WHEREAS, if consolidation is denied, Hemlock LLC intends to seek to amend its complaints in both Action #1 and Action #2, and Kyocera intends to amend its responsive pleadings in both Action #1 and Action #2;

WHEREAS, Kyocera filed a motion to compel on October 8, 2015 (Dkt. No. 45), that is set for hearing on March 9, 2016;

WHEREAS, some of the issues raised in the motion have been superseded by rulings from the Court on January 6, 2016, and March 1, 2016, regarding Kyocera's counterclaims;

WHEREAS, Kyocera wishes to withdraw its pending motion to compel (Dkt No. 45) and continue to meet and confer with Hemlock regarding discovery in light of the Court's rulings, Hemlock's anticipated consolidated amended complaint, and Kyocera's anticipated consolidated amended answer;

Accordingly, it is hereby STIPULATED that:

Pursuant to Fed. R. Civ. P. 42(a), this action is consolidated with the related action Hemlock Semiconductor, LLC v. Kyocera Corporation, No. 16-cv-10376, which is also pending before this Court, for all purposes, including trial.

Given the parties' desire to file consolidated amended pleadings that supersede all pleadings previously filed in Action #1 and Action #2, Kyocera's Counterclaim in Action #2 is hereby deemed withdrawn (without prejudice), such

that Hemlock is no longer required to issue a responsive pleading to that Counterclaim.

Hemlock and Hemlock LLC shall file a consolidated amended complaint in this consolidated action on or before March 18, 2016, and Kyocera shall file a consolidated responsive pleading on or before April 8, 2016.

In order to allow the parties to meet and confer and potentially narrow or resolve discovery disputes, Kyocera's motion to compel (Dkt. No. 45) is hereby deemed withdrawn without prejudice, and oral argument regarding the motion will not be heard at the March 9, 2016 case management conference scheduled in this matter. The March 9, 2016 case management conference shall remain on the Court's calendar.

Date: March 4, 2016

SO STIPULATED.

/s/ Alvin Lee
J. Peter Coll, Jr.
John Ansbro
Alvin Lee
ORRICK HERRINGTON &
SUTCLIFFE, LLP
51 W. 52nd St.
New York, NY 10019
Tel: (212) 506-5000
pcoll@orrick.com
jansbro@orrick.com

/s/ David C. Doyle (with consent)
David C. Doyle
William V. O'Connor
Christian G. Andreu-von Euw
Morrison & Foerster LLP
12531 High Bluff Drive
San Diego, CA 92130-2040
Tel: (858) 720-5100
ddoyle@mofo.com
woconnor@mofo.com
christian@mofo.com

alee@orrick.com

Craig W. Horn (P34281)
BRAUN, KENDRICK, FINKBEINER, PLC
4301 Fashion Square Boulevard
Saginaw, Michigan 48603
Tel: (989) 498-2100
crahor@BraunKendrick.com

*Attorneys for Plaintiff Hemlock
Semiconductor Corporation*

Robert A. Hahn (P28193)
Jungerheld, Hahn & Washburn, P.C.
P.O. Box 6128
Saginaw, MI 48608-6128
Tel: (989) 790-0000
r.hahn@ameritech.net

Keefe A. Brooks (P31680)
Brooks Wilkins Sharkey & Turco, PLLC
401 S. Old Woodward, Suite 400
Birmingham, MI 48009
Tel: (248) 971-1800
brooks@bwst-law.com

*Attorneys for Defendant Kyocera
Corporation*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

HEMLOCK SEMICONDUCTOR CORPORATION,

Plaintiff,

Case Nos. 15-cv-11236-BC

v.

Honorable Thomas L. Ludington

KYOCERA CORPORATION,

Defendant.

and

HEMLOCK SEMICONDUCTOR, LLC.

Plaintiff,

Case Nos. 16-10376-BC

v.

Honorable Thomas L. Ludington

KYOCERA CORPORATION,

Defendant.

ORDER CONSOLIDATING CASES AND DIRECTING FILINGS

Pursuant to the parties' stipulation, the above captioned matter will be consolidated with *Hemlock Semiconductor, LLC v. Kyocera Corporation*, No. 16-cv-10376 (E.D. Mich. Feb. 3, 2016) under Federal Rule of Civil Procedure 42(a).¹ In order to manage and clarify all pending claims in the newly consolidated action, Hemlock and Hemlock LLC will be directed to file a single amended complaint on or before March 18, 2016, setting forth all of its claims against Kyocera. Kyocera will then be required to file its responsive pleading on or before April 8, 2016.

Accordingly, it is **ORDERED** that *Hemlock Semiconductor Corporation v. Kyocera Corporation*, NO. 15-cv-11236 (E.D. Mich. April 1, 2015) and *Hemlock Semiconductor, LLC v.*

¹ This consolidation does not alter any original filing dates for statute of limitations purposes.

Kyocera Corporation, No. 16-cv-10376 (E.D. Mich. Feb. 3, 2016) are **CONSOLIDATED** in their entirety. The parties are **DIRECTED** to file motions, responsive materials, and other filings under case number **15-cv-11236**.

It is further **ORDERED** that Hemlock and Hemlock LLC are **DIRECTED** to file a consolidated amended complaint, setting forth all remaining claims against Kyocera, on or before **March 18, 2016**. Kyocera is **DIRECTED** to file a consolidated responsive pleading on or before **April 8, 2016**.

It is further **ORDERED** that Kyocera's motion to compel, ECF No. 45, is **WITHDRAWN**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 8, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 8, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager